

Herbert Dunn  
Civ. Pers.

00848

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-187123

**DATE:** February 9, 1977

**MATTER OF:** Mr. William N. Baggett - Reimbursement of  
real estate expenses

- DIGEST:**
1. Claim of transferred employee for reimbursement of closing cost, paid by seller and included in sales price of residence which he purchased at new station may not be allowed on basis that such costs were added to purchase price since such costs were incurred incident to construction loan of seller-builder and are inherently part of builder's cost and cannot be considered separate from price allocable to realty.
  2. Employee who was transferred is not entitled to reimbursement for loan origination fee since it is finance charge under Public Law 90-321 and implementing Regulation Z. See Federal Travel Regulations (FPMR 101-7) para. 2-6.2d (May 1973). However, credit report fee, recording fees, state revenue stamps, and intangible mortgage tax are reimbursable under FTR.
  3. Employee of Administrative Office of the United States Courts claims reimbursement for legal fee incurred in connection with purchase of residence at his new duty station. Such fee is reimbursable to extent that it represents services of types enumerated in Federal Travel

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Regulations para. 2-6.2c. (May 1973). However, it is not reimbursable unless breakdown of allowable items is furnished. See Comp. Gen. decs. cited.

This action is in response to a letter dated August 3, 1976, from Mr. John R. Breslin, Authorized Certifying Officer of the Administrative Office of the United States Courts, requesting a decision as to the entitlement of Mr. William N. Baggett, a probation officer, to reimbursement of closing costs in the amount of \$1,868.05 paid in connection with the purchase of a residence in Lakeland, Florida, incident to his transfer of official station from Washington, D.C., to Tampa, Florida, on April 14, 1975.

The record indicates that Mr. Baggett's house was financed by the assumption of a construction loan secured by the seller (80%), mortgage loan secured by the buyer (10%), and a down payment paid by the purchaser from his own funds (10%). Documents supplied by Mr. Baggett include a statement signed by the builder-seller indicating that the closing costs which were incurred by the seller were reimbursed by Mr. Baggett as part of the total purchase price paid. Mr. Baggett has submitted the seller's construction loan closing statement and the closing statement incident to the sale of the house to him. The items appearing on these statements for which reimbursement is claimed in whole or in part are as follows:

Settlement Charges

<u>Seller's Loan Assumed by Purchaser</u>		<u>Purchaser's Loan</u>
1. Loan Origination Fee	\$876.00	\$109.50
2. Credit Report		11.40
3. Mortgage insurance premium for 12 months		184.25
4. Appraisal	65.00	

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5. Inspection Fee	50.00	
6. Attorney's Fees	314.05	79.42
7. Recording Fee	34.85	16.00
8. State Taxes/stamps	43.80	5.50
9. Intangible Tax - mortgage	58.40	7.30

Mr. Baggett also claims reimbursement for an item of \$36 which appears on his travel voucher opposite the caption "Mortgage Title Insurance."

The authority to reimburse a Government employee for expenses incurred in connection with real estate transactions upon official transfer of station is found in section 5724a of title 5, United States Code (1970). The governing regulations implementing this statute and relevant to this case are contained in chapter 2, part 6 of the Federal Travel Regulations (FPMR 101-7), May 1973.

In decision 52 Comp. Gen. 11 (1972) we stated the following on page 13:

"The closing costs which were added to the purchase price are clearly discernible and separable from the price allocable to the realty. Although the seller may have actually performed the act of initially paying the costs, the down payment and the amount paid at closing by the purchaser from his own funds exceeded the amount of those costs and the seller regards them as having been, in effect, paid by the purchaser. Also, the purchaser has supplied documentation of the amount of the costs and of his liability for them. In the light of the facts in this case, we believe the conditions of subsections 4.1f and 4.3a of OMB Circular No. A-56, supra, may be considered as having been met."

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The relevant substance of subsections 4.1f and 4.3a of Circular No. A-56 is contained in the current regulations, FTR para. 2-6.1f and para. 2-6.3a (May 1973).

The settlement costs paid by the seller on behalf of the purchaser in 52 Comp. Gen. 11 were those which the purchaser of a completed residence would normally pay. In this case the record indicates that the closing costs which the builder-seller added to the purchase price paid by Mr. Baggett were incurred incident to obtaining a construction loan and were paid October 2, 1975. Therefore, such costs are inherently part of the builder's costs and cannot be considered separate from the price allocable to the realty. In this connection FTR para. 2-6.2d provides in pertinent part as follows:

"In cases involving construction of a residence, reimbursement of expenses would include those items of expense which are comparable to expenses that are reimbursable in connection with the purchase of existing residences and will not include expenses which result from construction."

In view of the regulation cited above and since the expenses incurred by the builder-seller incident to the construction loan are for inclusion in the sales price, Mr. Baggett may not be reimbursed any of such expenses. He is entitled only to reimbursement of expenses incident to the sale of the completed residence which are allowable under the Federal Travel Regulations.

Concerning the loan origination fee, FTR para. 2-6.2d (May 1973) provides in pertinent part that:

" \* \* \* no fee, cost, charge, or expense is reimbursable which is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System."

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The loan origination fee, computed at 1 percent of the loan, claimed by Mr. Baggett is to cover the various administrative costs of processing and handling the loan. We have held in the past that this fee may be described as a "loan fee" within the meaning of section 106(a)(3) of the Truth in Lending Act, Public Law 90-321, 15 U.S.C. § 1605(a)(3). See 54 Comp. Gen. 827 (1975); B-185621, April 27, 1976; B-183972, April 16, 1976. There is no exception contained in section 106(e) of the Act, 15 U.S.C. § 1605(e), for this fee and it must be considered a "finance charge" in accordance with section 106(a). Since the Federal Travel Regulations preclude reimbursement of a finance charge, reimbursement may not be allowed for the service charge paid by Mr. Baggett.

The charges for a credit report, State taxes/stamps, and the intangible tax-mortgage are made specifically reimbursable by FTR para. 2-6.2d. Likewise, recording fees are reimbursable under FTR para. 2-6.2c. Accordingly, reimbursement of these items may be made to the extent that they do not exceed the customary charges made in the area involved, as required by the regulations cited.

Mr. Baggett claims reimbursement for both mortgage insurance premium for 12 months (\$184.25) and for mortgage title insurance (\$36). It is unclear which amount represents a mortgage title policy or lender's title insurance and which represents owner's title insurance. However, if either item represents mortgage title insurance, Mr. Baggett may be reimbursed for this expense under the provisions of FTR para. 2-6.2d (1973) to the extent it does not exceed the amount customarily paid in the locality. Also, in connection with the \$36 item, we note that Mr. Baggett's application for reimbursement (attached to the travel voucher) shows a \$36 item opposite the caption "Escrow Agent's Fee" which is a reimbursable item.

Mr. Baggett's claim for reimbursement of legal fees is made pursuant to Federal Travel Regulations (FPMR 101-7) para. 2-6.2c (May 1973). That section provides as follows:

"c. Legal and related expenses. To the extent such costs have not been included in brokers' or similar services

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For which reimbursement is claimed under other categories, the following expenses are reimbursable with respect to the sale and purchase of residences if they are customarily paid by the seller of a residence at the old official station or if customarily paid by the purchaser of a residence at the new official station, to the extent they do not exceed amounts customarily charged in the locality of the residence: costs of (1) searching title, preparing abstract, and legal fees for a title opinion, or (2) where customarily furnished by the seller, the cost of a title insurance policy; costs of preparing conveyances, other instruments, and contracts and related notary fees and recording fees; costs of making surveys, preparing drawings or plats when required for legal or financing purposes; and similar expenses. Costs of litigation are not reimbursable."

We have consistently held that only attorney's fees that represent services of the types enumerated in FTR para. 2-6.2c (May 1973) are reimbursable. B-183443, July 14, 1975; B-179482, March 21, 1974. Whether a charge for legal fees incurred in connection with the sale or purchase of a residence falls within the services enumerated in the regulation requires, as a practical matter, that the employee submit adequate documentation of the types of services performed and the amount allocated to each service. Thus, we have held on numerous occasions that where attorney's fees incurred in the sale of a residence are stated as a lump sum, no part of the fee is reimbursable until the claimant obtains an itemization of those portions of the fee allocable to the items reimbursable under FTR para. 2-6.2c (May 1973). 54 Comp. Gen. 67 (1974); B-180752, June 12, 1974; B-175328, September 21, 1972. Since no breakdown of the legal fee has been submitted, reimbursement may not be paid at the present time.

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Action on the voucher should be taken in accordance with the above.

*W. K. Allen*  
Deputy Comptroller General  
of the United States